

DEPARTMENT OF HEALTH SERVICES

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July 16, 1993

TO: All County Welfare Directors
All County Administrative Officers
All County Medi-Cal Program Specialists/Liaisons

Letter No.: 93-46

Senate Bill 1559, CHAPTER 697

REF. ARTICLE 6, MEDI-CAL ELIGIBILITY MANUAL

The purpose of this letter is to respond to a question posed by the Southern Regional Medical Care Committee of the County Welfare Directors Association.

QUESTION:

SB 1559 includes language that allows counties to release persons from jail, ending incarceration, in order to obtain medical care. It also stipulates that persons requiring medical care can be referred for medical care prior to booking actions for incarceration. Our Health Care Agency believes that this language opens up the previous issue regarding incarceration and Medi-Cal and that there are situations in which the Social Service Agency should take and process an application for Medi-Cal even though it is known that within a short period of time the individual will become incarcerated. Please provide a policy statement in regards to this legislation.

RESPONSE:

(1) SB 1559 added Section 26605.5 to the Government Code:

"26605.5. (a) The sheriff has the authority, after conferring with a physician who is neither a county employee nor under a preexisting contract with the county, to release from a county correctional facility for transfer to a medical facility or residential care facility, a prisoner whose physical condition, in the opinion of the examining physician, is such that he or she is rendered incapable of causing harm to others upon or after release from custody. Prior to authorizing the release, however, the sheriff shall first determine that all of the following conditions exist:

"(1) The prisoner, upon diagnosis by the examining physician, is deemed to be so severely physically incapacitated that he or she poses no threat to the safety of others.

"(2) The examining physician has no reasonable expectation that the prisoner's physical condition will improve to the extent that he or she could pose a threat to the safety of others.

"(3) The prisoner's medical needs would be better served in a medical facility or residence other than a county correctional facility.

"(b) Prior to the release of any prisoner pursuant to this section, the sheriff shall notify the presiding judge of the superior court of his or her intention to transfer a severely incapacitated prisoner to a medical facility or residence for the provision of medical care and other services. This notification shall include:

"(1) The prisoner's name.

"(2) The offense or offenses for which the prisoner was incarcerated, if applicable, and the pending charges, if applicable.

"(3) The date of sentence, if applicable.

"(4) The physician's diagnosis of the prisoner's condition.

"(5) The physician's prognosis for the prisoner's recovery.

"(c) Nothing in this section shall be construed as authorizing the sheriff to refuse to receive and incarcerate a defendant or sentenced individual who is not in need of immediate medical care or who has a terminal medical condition."

For purposes of Medi-Cal eligibility determinations, Section 26605.5 is limited in its application to the circumstances detailed in state regulation, in federal regulation, and in recent federal guidelines.

Federal regulations state that:

- (1) Federal financial participation (FFP) is not available in expenditures for services provided to individuals who are inmates of public institutions (42 U.S.C. Section 1396d(a)(24)(A) and 42 CFR Section 435.1008(a)(1));
- (2) An inmate of a public institution means a person who is living in a public institution (42 CFR Section 435.1009);
- (3) A public institution does not include a medical institution (42 CFR Section 435.1009); and
- (4) An inpatient is one who has been admitted to a medical institution and who is expected by the institution to receive room, board, and professional services in the institution for a 24-hour, or longer, period (42 CFR Section 435.1009).

It is the admission of the individual into a medical facility, not the transfer from the county correctional facility, which triggers the applicability of the federal regulation, and the availability of FFP.

Further, federal guidelines (Health Care Financing Administration (HCFA) Letter, January 13, 1992) indicate that:

- (1) An individual released from prison or jail on probation, parole, or a release order for inpatient treatment is not considered an inmate of a public institution;
- (2) An individual released from prison or jail due to a medical emergency who would otherwise be incarcerated "but for" the medical emergency is considered to be an inmate of a public institution; and
- (3) An individual released from jail under a court probation order due to a medical emergency is not considered to be an inmate of a public institution.

The new Government Code section fails to make these distinctions.

As stated previously, our interpretation of section 26605.5 is that it is limited in its application to the circumstances detailed in state regulation, federal regulation, and in the new federal guidelines. We interpret "release from a county correctional facility" to mean a permanent release and "transfer to a medical facility or residential care facility" to mean admission of the individual as an inpatient. If the medical transfer is occasioned by an ongoing medical condition rather than by a medical emergency "but for" which the individual would remain in the county correctional facility, there should be no hindrance to Medi-Cal eligibility; that is, an individual will not be considered to be an inmate of a public institution when permanently released from a prison or jail in order to receive inpatient services at a medical institution for a medical condition.

(2) SB 1559 Amends Section 4015 of the Penal Code to read:

"4015. The sheriff shall receive all persons committed to jail by competent authority. The board of supervisors shall provide the sheriff with necessary food, clothing, and bedding, for those prisoners, which shall be of a quality and quantity at least equal to the minimum standards and requirements prescribed by the Board of Corrections for the feeding, clothing and care of prisoners in all county, city and other local jails and detention facilities. Except as provided in Section 4016, the expenses thereof shall be paid out of the county treasury.

"Nothing in this section shall be construed in a manner that would require the sheriff to receive a person who is in need of immediate medical care until the person has been transported to a hospital or medical facility so that his or her medical needs can be addressed prior to booking into county jail."

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The federal regulations speak in terms of an inmate of a public institution, i.e., one who is living in a public institution (42 CFR Section 435.1009). Prior to commitment to jail, an individual is not an inmate (HCFA Letter, January 13, 1992.) The federal guidelines state that an individual who, after arrest but before booking, is escorted by police to a hospital for medical treatment and held under guard is not an inmate of a public institution and is eligible for Medi-Cal. Therefore, Section 4015 of the Penal Code is in line with federal regulation and federal guidelines.

Title 22, California Code of Regulations, Section 50273 will be revised and amended to reflect federal regulation and guidelines as well as the language contained in Penal Code Section 4015.

If you have any questions, please contact Elena Lara of my staff at (916) 657-0712.

Sincerely,

ORIGINAL SIGNED BY

Frank S. Martucci, Chief
Medi-Cal Eligibility Branch